

Public Necessity Rules  
of the  
Department of State  
Division of Charitable Solicitations and Gaming

Statement of Necessity Requiring Public Necessity Rules

Pursuant to Public Chapter Number 430 (2007), Tennessee Code Annotated Title 35 Chapter 11, Catastrophic Illness Trusts, was amended by adding notice and reporting requirements for all accounts established to raise money for persons afflicted with a catastrophic illness. The changes to Title 35 Chapter 11 require the Division of Charitable Solicitation and Gaming (hereinafter "Division") to regulate such accounts and empower the division to assess civil penalties against anyone who violates the provisions. The changes also give the Secretary of State the authority to adopt rules and regulations to carry out his duties under the chapter.

Due to the length of time necessary to complete the rulemaking process, these public necessity rules are required in order for the Division to implement the new statute. Without these rules, the Division will be unable to effectively regulate such accounts. Therefore, the rules shall be implemented by public necessity rules to be effective July 1, 2007.

For complete copies of the text of the notice, contact Todd R. Kelley, Director, Division of Charitable Solicitations and Gaming, 312 Eighth Avenue North, William R. Snodgrass Tennessee Tower, 8<sup>th</sup> Floor, Nashville, TN 37243, telephone 615-741-2555.

Todd R. Kelley, Director  
Division of Charitable Solicitations and  
Gaming

Rules  
of  
Tennessee Department of State  
Division of Charitable Solicitations

Chapter 1360-3-4  
Catastrophic Illness Trusts

Table of Contents

1360-3-4-.01	Definitions
1360-3-4-.02	Notice Requirements for Establishing Catastrophic Illness Trust
1360-3-4-.03	Accounting of the Trust
1360-3-4-.04	Financial Records
1360-3-4-.05	Assessment of Civil Penalties
1360-3-2-.01	Definitions.
(1)	"Catastrophic illness" means a severe illness requiring prolonged hospitalization or recovery and involving high costs for medical care.
(2)	"Secretary of State" means the Secretary of State or the Secretary's authorized representative.

- (3) "Trusts" means a custodial account established pursuant to Tennessee Code Annotated Section 35-11-101 *et. seq.*

**Authority:** T.C.A. §§ 48-101-501(8) and 503(b); Chapter 430 § 10 of the Public Acts of 2007.

1360-3-4-.02 Notice Requirements for Establishing Catastrophic Illness Trust

- (1) The trustee or bank or trust company acting as trustee shall file with the Secretary of State written notice of the establishment of the trust.
- (2) The notice shall include the name, address and contact information of the trustee and beneficiary as well as identification of the financial institution where the trust was established.

**Authority:** T.C.A. § 35-11-102(d); Chapter 430 § 6 of the Public Acts of 2007.

1360-3-4-.03 Accounting of the Trust

- (1) A trustee, other than a bank or trust company acting as trustee, shall file with the Division of Charitable Solicitations and Gaming an accounting of the trust on the yearly anniversary of the establishment of the trust.
- (2) The financial accounting of the trust filed shall include all revenue and expenditures of the trust.

**Authority:** T.C.A. § 35-11-102(e); Chapter 430 § 6 of the Public Acts of 2007.

1360-3-4-.04 Financial Records

- (1) All trustees shall be responsible for maintaining true and accurate financial records of the trust, including, but not limited to, records of all revenue and expenses of the trust. All records should be kept for no less than three (3) years.
- (2) Such records shall be made available to the Secretary of State for inspection subject to the provisions of Title 45, Chapter 10 and the Federal Right to Financial Privacy Act, Pub. L. 95-630, as amended, 12 U.S.C. Section 3401 *et. seq.*
- (3) In addition to the authority to inspect financial records, the Secretary of State may compel additional production of documents, exhibits, or things, or subpoena duces tecum presentation and delivery of all records or other tangible items, by any person which the Secretary believes to be pertinent in conducting any investigation.

**Authority:** T.C.A. § 35-11-101 *et seq.*; Chapter 430 §§ 8, 9 of the Public Acts of 2007; T.C.A § 48-101-514(b)(1).

1360-3-4-.05 Assessment of Civil Penalties

- (1) The Secretary of State may impose a civil penalty of not more than five thousand dollars (\$5,000) for each and any violation of Tennessee Code Annotated Section 35-11-101 *et seq.* or any rule thereunder.

- (2) Upon notice to affected parties of the imposition of civil penalties by the Secretary of State, the affected party may seek review by requesting a hearing, which shall be conducted pursuant to the Uniform Administrative Procedures Act, Title 4, Chapter 5.
- (3) Any civil penalty shall be enforced in the following manner:
  - (a) If a petition for review of the assessment of a penalty through a “contested case” hearing is not filed within thirty (30) days after the date the assessment is served, the affected party shall be deemed to have consented to the assessment and it shall become final;
  - (b) Whenever any assessment has become final, because of a person’s failure to appeal the Secretary of State’s assessment or otherwise, the Secretary of State, in the name of the state, may apply to the appropriate court for a judgment and seek execution on such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment; and
  - (c) The Secretary of State may institute proceedings for assessment in the chancery court of Davidson County or in the chancery court of the county in which all or part of the violation or failure to comply occurred, or in the county in which such person resides, has such person’s principal place of conducting solicitations, or has conducted or transacted business or solicitation campaigns.

**Authority:** T.C.A. § 35-11-101 *et seq.*; Chapter 430 § 7 of the Public Acts of 2007; T.C.A. § 48-101-514(a)(1), 2(A-C).

The public necessity rules set out herein were properly filed in the Department of State on the 1st day of August,, 2007, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 13th day of January, 2007. (FS 08-01-07; DBID 2645)